

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULE-MAKING	:	NOTICE OF TIME PERIOD
PROCEEDINGS BEFORE THE	:	FOR COMMENTS FOR THE
MEDICAL EXAMINING BOARD	:	ECONOMIC IMPACT ANALYSIS
	:	(CLEARINGHOUSE RULE 12-)

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Medical Examining Board relating to definitions, practice prescribing limitations, employment requirements and supervising physician responsibilities including how this proposed rule may affect business, local government units and individuals. The comments will be considered when the Department of Safety and Professional Services prepares the Economic Impact Analysis pursuant to §227.137. Written comments may be submitted to:

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Division of Board Services
Department of Safety and Professional Services
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Madison, WI 53708-8935
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The deadline for submitting economic impact comments is **January 17, 2012**

PROPOSED ORDER

The Wisconsin Medical Examining Board proposes an order to renumber Med 8.02 (1); to amend Med 8.05 (2) (b), (c) and (d), Med 8.07 (1), Med 8.07 (2) (a) and (e), Med 8.08 (3) (b), Med 8.10 (1) to (4); and to create Med 8.01 (1), 8.02 (1), 8.02 (4m), 8.02 (7), Med 8.05(2) (e) and 8.08 (3) (c) relating to definitions, practice prescribing limitations, employment requirements and supervising physician responsibilities.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 448.21 (2) and (3), Stats.,

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 448.05 (5), 448.20 (3) (a), 448.40 (2) (f), Stats.,

Explanation of agency authority:

The legislature via ss. 15.08 (5) (b), and 227.11 (2) (a), Stats., confers upon the Medical Examining Board general powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces. Section 448.05 (5) is especially concerned with promulgating rules that establish licensing and practice standards for physician assistants. Section 448.20 (3) (a) confers upon the Council on Physician Assistants the authority to advise the Medical Examining Board on revisions of standards in licensing, practice, education and training of physician assistants. While s. 448.40 (2) (f), Stats., directs the board to promulgate rules regarding the prescriptive practice of physician assistants. Therefore, the Medical Examining Board is both generally and specifically authorized to promulgate these proposed rules.

Related statute or rule:

Sections 448.01 (6), 448.20 (3), Stats., Wis. Admin. Code §MED 10.02 (t)

Plain language analysis:

This proposed rule increases the number of physician assistants a physician may concurrently supervise from 2 to 4. Currently, a physician may supervise two physician assistants simultaneously. The Medical Examining Board has discretion to authorize a physician to supervise more than two physician assistants if the physician submits a written plan for the board's review and the board is satisfied that the increased ratio will not compromise patient safety. The proposed rule will increase the ratio of physician to physician assistants to 1:4. The proposed rule defines terms necessary to clarify responsibilities in the physician-led team in which physicians and physician assistants work. The proposed rule also replaces the term "oral examination" with "personal appearance".

SECTION 1. Med. 8.01 (1) adds a statement of intent to the authority and purpose provision.

SECTION 2. rennumbers 8.02 (1) to 8.02 (1m).

SECTION 3. defines the terms "adequate supervision", "general supervision" and "supervising physician".

SECTION 4. amends Med 8.05 (2) (b), (c) and (d) by replacing the term "oral examination" with the term "personal appearance".

SECTION 5. creates 8.05 (2) (e) providing for a satisfactory personal appearance.

SECTION 6. amends Med 8.07(1) by clarifying that a physician assistant's practice may be supervised by one or more physician and amends Med 8.07 (2) (a) and (e) by striking repetitive and ambiguous language.

SECTION 7. amends Med 8.08 (3) (b) by requiring supervising physicians to consult with physician assistants in establishing the method and frequency of periodic review of the physician

assistant's prescriptive practice. The rule specifies that, while discretionary, the review must be completed at least annually.

SECTION 8. creates 8.08 (3) (c) requiring the supervising physician and physician assistant document the periodic review.

SECTION 9. amends Med 8.10 (1) to (4) by increasing the ratio of physician to physician assistants from 1:2 to 1:4 and clarifying the nature of supervision between the physician assistant and the supervising physician. Additionally, it eliminates outdated references to substitute supervising physicians.

Summary of, and comparison with, existing or proposed federal legislation:

There is no comparative existing or proposed federal rule.

Comparison with rules in adjacent states:

Illinois: The state of Illinois limits the physician assistant to physician ratio to 2:1; unless the supervising physician designates an alternate supervising physician. An alternate supervising physician may supervise more than two physician assistants at the same time when the supervising physician is unable to fulfill the duties. 225 ILL. COMP. STAT. 95/7

Iowa: The state of Iowa limits the physician assistant to physician ratio to 2:1. 645 IAC 326.8 (3) (148 C)

Michigan: The state of Michigan allows a physician assistant to physician ratio of 4:1 when the supervising physician is a solo practitioner who practices in a group of physicians and treats patients on an outpatient basis. Physicians who have privileges at a health facility or agency or a state correctional facility may supervise more than four physician assistants; but the physician assistant to physician ratio is 2:1 if the physician supervises a physician assistant at more than one location. MCLS § 333.17048

Minnesota: The state of Minnesota allows a physician to supervise five physician assistants simultaneously. In the case of an emergency a physician may supervise more than five physician assistants at any given time. MINN. STAT. §147A.01

Summary of factual data and analytical methodologies:

In recognition of physician work-force shortages and at the request of the Council on Physician Assistants, the Medical Examining Board created a work group to research and advise the board on whether or not to increase the supervision ratio of physician assistants to physicians, and if so under what circumstances. The work group consisted of members of the Medical Examining Board, who are licensed physicians, the chairperson of the Council on Physician Assistants and consultation from the State Medical Society, the Wisconsin Council of Physician Assistants and the Wisconsin Hospital Association. Members of the work group examined the statutes and regulations of other states as well as recommendations of the Federation of State Medical

Boards, the American Medical Association, the American Association of Family Practitioners and the American Academy of Physician Assistants.

The national trend, as recognized by the Federation of State Medical Boards and the American Academy of Physician Assistants, is to increase the number of physician assistants a physician may supervise. Both organizations have, as a national model, recommended that regulatory bodies refrain from specifying a particular number of physician assistants a physician may concurrently supervise. Rather, the recommendation is that supervising physicians make the determination based on prevailing standards for competent medical practice, day-to-day realities, and the nature of the physician's actual practice.

The work group presented its findings to the Medical Examining Board with a recommendation that the board increase the ratio from 1:5. The board considered several factors including practice setting in which physician and physician assistants carry out their duties and patient care issues such as a growing shortage of health care practitioners in underserved communities. The board emphasized the need for adequate physician supervision of physician assistant's practice and adopted the work group's recommendation to increase the ratio of physician assistants a physician may supervise. However, after extensive discussion, the board decided to authorize a physician to physician assistant supervision ratio of 1:4. The proposed rule would continue to allow the board, in its discretion, to increase the ratio in individual circumstances.

Analysis and supporting documents used to determine effect on small business or in preparation of economic Impact Analysis:

The department is currently soliciting information and advice from businesses, local government units and individuals in order to prepare the Economic Impact Analysis.

Anticipated costs incurred by the private sector:

The department anticipates that the proposed rule will incur no significant cost to the private sector.

Fiscal estimate:

The department estimates that the proposed rule will have no significant fiscal impact.

Effect on small business:

The department finds that the proposed rule will have no effect on small business as small business is defined in s. 227.114 (1), Stats.

Agency contact person:

Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.Leatherwood@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received on or before February 15, 2012 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med. 8.01 (1) is created to read:

Med. 8.01 (1) Physician assistants provide health care services as part of physician-led teams, the objectives of which include safe, efficient and economical health care. The realities of the modern practice of medicine and surgery require supervising physicians and physician assistants to use discretion in delivering the health care services, typically at the level of general supervision. The constant physical presence of a supervising physician is often unnecessary. The supervising physician and the physician assistant are jointly responsible for employing more intensive supervision when circumstances require direct observation or hands-on assistance from the supervising physician.

SECTION 2. Med 8.02 (1) is renumbered 8.02 (1m)

SECTION 3. Med 8.02 (1), (4m) and (7) are created to read:

Med. 8.02 Definitions. (1) “adequate supervision” means the supervising physician has knowledge of the physician assistant’s training, skill and experience pertaining to the acts undertaken; the supervising physician knows the scope of the health care to be provided; the supervising physician is competent and credentialed to perform the act; and there is an adequate physician-to-physician assistant ratio, taking into consideration the training, skill and experience of the physician assistant, risk of harm to the patient due to the nature of the procedure, and risk of harm due to characteristics of the patient.

(4m) “General supervision” means off-premises supervision, and may include on premises or face-to-face contact between the supervisor and the physician assistant being supervised as necessary. Between direct contacts, the supervisor is required to maintain indirect, off-premises telecommunication contact such that the physician assistant can, within 15 minutes, establish direct telecommunication with the supervisor.

(7) “Supervising physician” means a physician licensed in this state, who has an unlimited and unrestricted license, and who has accepted responsibility for providing adequate supervision of medical services provided by a physician assistant.

SECTION 4. Med 8.05 (2) (b), (c) and (d) are amended to read:

Med 8.05 (2) (b) An applicant may be required to complete ~~an oral examination~~ a personal appearance if the applicant:

(c) An application filed under this chapter shall be reviewed by an application review panel of at least 2 council members designated by the chairperson of the board to determine whether an applicant is required to complete ~~an oral examination~~ a personal appearance under par. (a). If the application review panel is not able to reach unanimous agreement on whether an applicant is eligible for licensure without completing ~~an oral examination~~ a personal appearance, the application shall be referred to the board for a final determination.

(d) Where both written and oral examinations are required they shall be scored separately ~~and the applicant shall achieve~~ a passing grade on both ~~examinations~~ is required to qualify for a license.

SECTION 5. Med 8.05 (2) (e) is created to read:

(e) Satisfactory completion of a personal appearance is within the board's discretion.

SECTION 6. Med 8.07 (1), (2) (a) and (e) are amended to read:

Med 8.07 Practice. (1) SCOPE AND LIMITATIONS. In providing medical care, the entire practice of any physician assistant shall be under the supervision of ~~a licensed physician~~ one or more supervising physicians. The scope of practice is limited to providing medical care specified in sub. (2). A physician assistant's practice may not exceed his or her educational training or experience and may not exceed the scope of practice of the supervising physician. A medical care task assigned by the supervising physician to a physician assistant may not be delegated by the physician assistant to another person.

Med 8.07 (2) (a) Attending initially a patient of any age in any setting to obtain a personal medical history, perform an appropriate physical examination, and record and present pertinent data concerning the patient ~~in a manner meaningful to the supervising physician~~.

Med 8.07 (2) (e) Assisting the supervising physician in a hospital facility, as defined in s. 50.01 (1m), Stats., by assisting in surgery, making patient rounds, recording patient progress notes, compiling and recording detailed narrative case summaries and accurately writing or executing orders ~~under the supervision of a licensed physician~~.

SECTION 7. Med 8.08 (3) (b) is amended to read:

Med 8.08 (3) (b) The supervising physician in consultation with the physician assistant shall determine the method and frequency of the periodic review based upon the nature of the prescriptive practice, the experience of the physician assistant, and the welfare of the patients. The process and schedule for review shall indicate the minimum frequency of review and identify the selection of prescriptive orders or patient records to be reviewed. The periodic review must occur at least once per calendar year.

SECTION 8. Med 8.08 (3) (c) is created to read:

Med 8.08 (3) (c) The supervising physician and the physician assistant are jointly responsible for insuring the reviews required under ss. Med 8.08 (3)(a) and (b) are documented in accordance with s. Med 8.08 (1), and signed by the supervising physician and physician assistant.

SECTION 9. Med 8.10 (1) to (4) are amended to read:

Med 8.10 Employment requirements; supervising physician responsibilities. (1) ~~No physician may concurrently supervise more than 2 physician assistants unless the physician submits a written plan for the supervision of more than 2 physician assistants and the board approves the plan. A physician assistant may be supervised by more than one physician. A supervising physician shall supervise physician assistants in a manner consistent with competent medical practice, considering the type and circumstance of the physician's practice and the authority delegated to the physician assistant. The physician assistant's scope of practice must be clearly defined and appropriate to the physician assistant's level of competence. A supervising physician may not concurrently supervise more than four physician assistants unless a written plan to do so has been submitted to and approved by the board.~~

(2) Another licensed physician may be designated by the supervising physician to supervise a physician assistant for a period not to exceed 8 weeks per year. Except in an emergency, the designation shall be made in writing to the substitute supervising physician and the physician assistant. ~~The supervising physician shall file with the board a copy of the substitution agreement~~

(3) The supervising physician or substitute supervising physician shall be available to the physician assistant at all times for consultation ~~either in person or within 15 minutes of contact~~ by telecommunications or other electronic means.

(4) ~~A supervising physician shall visit and conduct an on-site review of facilities attended by the physician assistant at least once a month. Any patient in a location other than the location of the supervising physician's main office shall be attended personally by the physician consistent with his or her medical needs. The constant presence of a supervising physician is not required, however the methods utilized for supervision must allow the physician to fulfill all supervisory duties required by law.~~

(END OF TEXT OF RULE)
